Response Requested

(2)

No. 01-9812

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IN THE SUPREME COURT OF THE UNITED STATES

ARTURO D.,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the California Supreme Court's decision in this case, permitting a police officer to conduct a limited warrantless search of a vehicle for identification and registration documentation during the course of a routine traffic stop when the driver is unable to produce the requested documentation, violate the Fourth Amendment and conflict with this Court's ruling in *Knowles v. Iowa*, 525 U.S. 113(1998) and *New York v. Class*, 475 U.S. 106 (1986)?

LIST OF PARTIES

Petitioner Arturo D. was placed on probation following a true finding of guilt by the Solano County Juvenile Court. Respondent is the People of the State of California.

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IN THE SUPREME COURT OF THE UNITED STATES

No. 01-9812

ARTURO D.,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

STATEMENT OF THE CASE

The California Supreme Court found the facts as follows.

> At approximately 11:30 p.m. on a weeknight in late August 1998, Suisun City Police Officer Rowe stopped minor Arturo D.'s extended cab truck, which had been traveling more than 70 miles per hour in a 50 mile-per-hour zone. Arturo was driving and was accompanied by two passengers, one of whom was stretched across the truck's rear pull-down seat. When asked for his identification, Arturo gave his name, date of birth, and a Vallejo address, but admitted that he lacked a valid driver's license and that the truck was not his. Arturo provided no documentary evidence as to his identity, proof of insurance, or vehicle registration. At that point, Officer Rowe planned to issue defendant a citation for speeding and for driving without a license. Rowe asked the occupants to exit from the truck, and they did so. From inside the front of the truck cab, Rowe then blindly felt with his hands under the driver's seat for documentation relating to the driver and the vehicle. Not encountering such

documents, Rowe repositioned himself behind the driver's seat, bent down, and looked under the seat. Rowe found a glass smoking pipe located "towards the center" of the floor under the driver's seat. In the same location Rowe also found a blue box containing a white vial, which itself contained an unusable amount of white powder. Rowe asked whether the items belonged to Arturo, and he replied that they did.

Rowe issued a citation to Arturo for speeding and driving without a license, and because there was no licensed driver to drive away the truck, Rowe made arrangements to have the vehicle towed. (Veh. Code, §§ 12500, subd. (a), 14602.6, subd. (a), 22651, subd. (p).) Arturo went to the police station, planning to make a telephone call to arrange a ride home. At the police station Rowe examined the blue box more closely, discovering in an internal compartment a plastic bindle containing a usable quantity of a white powdery substance that, after testing, proved to be methamphetamine. Arturo then was placed under arrest. The district attorney subsequently filed a petition alleging that Arturo came within the provisions of Welfare and Institutions Code section 602, in that he possessed methamphetamine (Health & Saf. Code, § 11377, subd. (a)) (count I) and an opium pipe (*id.*, § 11364) (count II), and had driven without a license (Veh. Code, § 12500, subd. (a)) (count III).

At the jurisdictional hearing, the trial court denied Arturo's suppression motion and sustained the petition as to counts II and III.[1/] Thereafter the court adjudged Arturo a ward of the court, and he appealed. In a published opinion, Division Four of the First District Court of Appeal reversed the order denying Arturo's motion to suppress the smoking pipe, reasoning that "the scope of the officer's intrusion went beyond that justified by the need to locate registration [and other identifying documents] and accordingly, it was unreasonable as a search for registration [and other identifying] documents."

Pet., Appendix A at 2-3 (footnote in original).[2/]

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1. The court found the evidence insufficient to establish that the blue box belonged to Arturo, and hence did not sustain the petition as to count I.

2. The full citation to the opinion in petitioner's case is *In re Arturo D.*, 27 Cal. 4th 60, 115 Cal. Rptr. 2d 581, 38

Respondent filed a petition for review in the California Supreme Court contesting the appellate court's reversal. The California Supreme Court granted review and consolidated petitioner's case with *People v. Hinger* (G023616).[3/] On January 24, 2002, the court reversed the California Court of Appeal and affirmed petitioner's conviction. Pet., Appendix A at 22-23, 29, 32. Petitioner filed the instant petition for writ of certiorari on April 19, 2002.

P.3d 433 (2002).

3. That case is also before this Court on a petition for writ of certiorari as *Hinger v. California*, Case No. 01-10497.

ARGUMENT

THIS CASE IS NOT APPROPRIATE FOR REVIEW ON CERTIORARI BECAUSE PETITIONER'S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED WHEN OFFICER ROWE SEARCHED UNDER THE DRIVER'S SEAT FOR IDENTIFICATION AND REGISTRATION AFTER PETITIONER COULD NOT PROVIDE SUCH DOCUMENTATION.

Petitioner argues the California Supreme Court opinion "eviscerates" this Court's decision in *Knowles v. Iowa*, 525 U.S. 113 (1998) and offends Fourth Amendment principles. Pet. 14. However, the California Supreme Court correctly distinguished *Knowles*, and properly applied this Court's holding in *New York v. Class*, 475 U.S. 106 (1986) in upholding the search in this case. As such, granting certiorari is not appropriate.

A. The California Law Authorizing Limited Searches For Identification And Registration

Several California Vehicle Code sections authorize the search Officer Rowe conducted here. First, California Vehicle Code section 2805 allows an officer to inspect a vehicle to establish rightful ownership. Pet. 2-3. Second, California Vehicle Code section 4462 requires the driver of a vehicle to present registration of the car to a peace officer when asked. Pet. 3. Finally, California Vehicle Code sections 12951(a)&(b) require that a driver have a driver's license in his or her immediate possession when driving and must present

that license to an officer when asked. Pet. 3-4.

Based on the above provisions, the California Supreme Court held in *People v. Webster*, 54 Cal. 3d 411, 430, 285 Cal. Rptr. 31, 814 P.2d 1273 (1991), that an officer may enter a validly detained vehicle to conduct a warrantless search for identification and registration when not provided by the driver. A search for such documentation does not exceed the proper scope of the search if it is confined to the "traditional repositories" where such documentation would normally be found. *Id.* at 431.

Three years later, the California Supreme Court reaffirmed the *Webster* holding in *People v. Turner*, 8 Cal. 4th 137, 32 Cal. Rptr. 2d. 762, 878 P.2d 521 (1994). There, the court upheld the validity of a search for registration documents in the glove compartment. *Id.* at 181-82.

In the present case, the California Supreme Court was asked to reexamine its earlier decisions in light of this Court's ruling in *Knowles v. Iowa*, 525 U.S. 113. The court reaffirmed the principle that California statutory authority allows a limited search for registration and identification. Pet., Appendix A at 5-6. It then addressed the constitutional underpinnings of such a search by applying cases from this Court. Ultimately, the court concluded that Officer Rowe's action of looking under petitioner's driver's seat to

ascertain his identity and the truck registration did not violate the rule set out in *Knowles v. Iowa* and did not offend constitutional standards. Pet., Appendix A at 18-29.

B. This Court's Decisions Relating To The Instant Case

In reaching its conclusion, the California Supreme Court considered two competing cases governing automobile searches. The first is *New York v. Class*, 475 U.S. 106, permitting limited regulatory searches of automobiles under appropriate conditions. The second is *Knowles v. Iowa*, 525 U.S. 113, restricting warrantless full field searches to those situations when the driver is actually arrested.

In *Class*, the defendant was detained for a traffic violation. He produced registration and insurance, but no license. One of the officers opened the defendant's car door to examine the vehicle identification number (VIN). After failing to find the VIN on the doorjamb, he looked on the dashboard which was covered with papers. When the officer reached inside the car to remove the papers, he saw the handle of a gun beneath the driver's side seat. *Class*, 475 U.S. at 108.

This Court upheld the officer's warrantless search. The decision rested upon balancing the nature and quality of the intrusion against the governmental interests involved. *Id.* at 118. That balance hinged on the importance of the VIN

as "a significant thread in the web of regulation of the automobile" for highway safety and tracking stolen vehicles, the decreased expectation of privacy drivers have in their cars, concerns for officer safety, and the limited scope of the intrusion from the officer's brief search. *Id.* at 111-114, 118-119.

By contrast, in *Knowles* this Court concluded that a warrantless full field search, conducted after citation but without an arrest, violated the Fourth Amendment. In *Knowles v. Iowa*, the officer issued a speeding ticket to a driver and then conducted a warrantless full field search of the driver's automobile without having arrested the driver. The Iowa Supreme Court upheld the search, concluding that a search incident to citation was constitutionally equivalent to a search incident to an arrest. The state court relied on the following syllogism to support its conclusion: (1) the officer had the legal authority to place the driver under arrest for the infraction; (2) had the officer placed the driver under arrest, he would have been justified in conducting a full search of the car incident to that arrest; therefore (3) the fact that the officer elected to cite and release the driver rather than arrest him should not detract from the officer's authority to conduct a full blown search. *Knowles*, 525 U.S. at 115-116.

This Court overturned the Iowa Supreme Court's ruling, finding that the "search incident to citation" scheme violated the Fourth Amendment. This Court reasoned that the two primary justifications for allowing a warrantless search incident to arrest, namely officer safety and the need to preserve evidence, were simply lacking in the search incident to citation situation. Rather, this Court observed that once the defendant had been stopped for speeding and issued a citation, all of the evidence necessary to prosecute the offense had been obtained. *Id.* at 118.

C. The Petition For Writ of Certiorari Should Be Denied Because The California Supreme Court Properly Applied This Court's Decisions And Fourth Amendment Principles To The Instant Case.

In its decision, the California Supreme Court properly concluded that *Class* is more applicable to the facts of petitioner's case than *Knowles* and correctly distinguished *Knowles*. The California court's decision does not conflict with this Court's Fourth Amendment jurisprudence and does not misapply existing case law. Consequently, petitioner's case is not appropriate for certiorari review.

At the outset, the California Supreme Court acknowledged that *Class* does not directly address the type of search at issue here. Pet. Appendix A at 12-13. However, the court concluded that the reasoning and approach set forth in

Class is more informative for analyzing the type of search conducted in petitioner's case than is *Knowles*, and the underlying rationale of *Class* is directly applicable to petitioner's case. In fact, the court pointed out that the type of search at issue here is perhaps more justifiable than a search for a VIN. Pet., Appendix A at 13 ("Indeed at least in one important respect, *Webster*-type searches may be more justifiable under the Fourth Amendment, in that the basis for a search for identification and registration documentation preparatory to the issuance of a citation would appear to be more compelling than the justification for a search to discover the VIN of a vehicle for which the driver had already produced apparently valid registration."). Ultimately, the court concluded that the rationale set out in *Class* permits the limited search of petitioner's car for the regulatory purpose of locating identification and registration documentation. Pet., Appendix A at 13-14.

The California court's conclusion is correct. The decision in *Class* dealt with the propriety of a regulatory search for the VIN under circumstances meriting further investigation. The search in the present case was regulatory as well, and the court conducted a similar balancing in finding that the government's interest in obtaining identification and registration information outweighed the

minimal intrusion caused by a limited search in an area with a lesser expectation of privacy. Here, the government interest manifested itself in the need to ascertain the true owner of the vehicle, to determine whether the vehicle was stolen, and to identify the driver. Therefore, the court did not exceed this Court's decision in *Class*.

The California court then considered whether the limitations announced by this Court in *Knowles* mandated a different result. After examining this Court's decision in *Knowles*, the California court correctly found that decision to be distinguishable. Pet. Appendix A at 15. The court pointed out that "the officer in [*Knowles*] already issued the driver a citation (apparently the officer had obtained sufficient identifying information to complete the citation), and thereafter had conducted an unrelated full-scale warrantless search for contraband." Pet., Appendix A at 15-16. The court found the decision in *Knowles* was properly viewed as applying to a full-scale search, conducted in absence of an actual arrest, and without justification or proper regulatory purpose. By contrast, in petitioner's case, the search was limited to locating the required documentation that petitioner had failed to produce. Unlike *Knowles*, the officer did not conduct a full-scale search after receiving all the necessary information for citation. Pet., Appendix A at 16. Thus,

Knowles did not cast doubt on the type of search conducted here. Pet. Appendix A at 16.

The California court's analysis of *Knowles* is correct. The Iowa Supreme Court's justification for upholding the warrantless search in *Knowles* was to equate that situation to a search incident to an arrest. Under that exception to the warrant requirement, an officer is permitted to conduct a full-scale search of the entire passenger compartment without needing any reason to suspect that a weapon or contraband would be found.

By contrast, the California court expressly disavowed any reliance on the rubric of a search incident to an arrest to justify the search in petitioner's case. Rather, the California court held the search was justified as a limited search that was regulatory in nature. Given the regulatory scheme surrounding automobiles, the officer was fully justified in searching for the specific items of license and registration which are mandatory for vehicle operation. *Knowles* is therefore inapplicable.

Petitioner also challenges the scope of the search conducted in his case. Petitioner contends that the search allowed by the California Supreme Court is an unlimited, full-scale search of the car, which is prohibited by *Knowles*. Pet. 15-16. However, contrary to petitioner's assertion, the

California court properly defined the permissible scope of the search based the analysis in *Class* and correctly found *Knowles* factually distinguishable.

The California court again acknowledged that this Court has not specifically approved or defined the scope of a warrantless search for required documentation. However, the California court noted that, in upholding the search in *Class*, this Court relied upon the limited and targeted nature of the officer's intrusion. *See Class*, 475 U.S. at 118 ("The search was focused in its objective and no more intrusive than necessary to fulfill that objective. The search was far less intrusive than a formal arrest . . . ."). Similarly, the California court in petitioner's case held that the scope of the search was permissible because it was limited to locations "where such documentation reasonably may be expected to be found." Pet., Appendix A at 20. The officer did not conduct a full field search and was not looking for contraband, as was the case in *Knowles*. The decision in petitioner's case is in line with this Court's decision in *Class*.[4/]

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4. Petitioner also suggests that "the sole justification for Rowe's entry into the truck was to discover evidence of Arturo's identification in order to secure the minor's appearance in court." Pet. 17. Petitioner is incorrect. The California Supreme Court made a factual finding that the officer was looking for both identification and registration documentation to ascertain the ownership of the truck and the driver's true identity for purposes of issuing the citation. Pet., Appendix A at 18-19.

Petitioner also contends that the search conducted in his case was unreasonable, claiming that the area under the driver's seat is not a location where the relevant documentation is reasonably likely to be found. Pet. 18. However, the California court cited numerous cases in which the relevant documentation was in fact found under the driver's seat, demonstrating the reasonable likelihood of finding documentation in that location. Pet., Appendix A at 22-23.

Finally, petitioner argues the California court's ruling is too expansive because it allows an officer to conduct such a search for the relevant documentation anytime the officer orders the driver out of the car during a traffic stop. Pet. 18. However, the California court went no further than this Court's ruling in *Class*, in which this Court noted that concern for officer safety justified the officer entering the car to search for the VIN, rather than asking the driver to return to the car to uncover the VIN. *Class*, 475 U.S. at 115-116 (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 108-111 (1977) (per curiam)).

In sum, granting the petition for writ of certiorari is not appropriate in this case. Petitioner premises his reasons for granting the writ on his general assertion that the California Supreme Court's decision contravenes this Court's

holding in *Knowles* and offends Fourth Amendment principles. However, petitioner all but ignores this Court's ruling in *New York v. Class*, upon with the California Supreme Court relied in reaching its conclusion. Contrary to petitioner's claims, the California Supreme Court properly applied this Court's precedents, and its decision does not create any conflict with this Court's Fourth Amendment jurisprudence.[5/] Consequently, the petition for writ of certiorari should be denied.

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5. Indeed, the California court cited several federal and state cases upholding searches similar to that conducted in petitioner's case. Pet. Appendix A at 16-17, n.16.

CONCLUSION

Respondent respectfully requests that the Court deny the petition for writ of certiorari.

Dated: September 17, 2002

Respectfully submitted,

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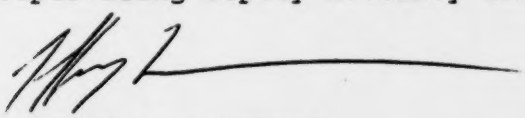

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DECLARATION OF SERVICE BY MAIL

Case Name: ***Arturo D. v. California***
Case No. **01-9812**

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 17, 2002, I served the attached

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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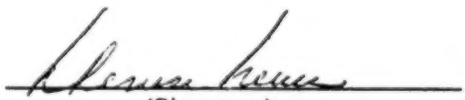
I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on September 17, 2002, at San Francisco, California.

Denise Neves



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